

Notice of Non-Responsive Reply

Election/Restrictions/Status

Applicant's election without traverse of Group I, claim(s) 1-20 and 38, drawn to an interfering RNA molecule having a sequence that is sufficiently complementary to a sequence of mRNA encoded by **human c-met (SEQ ID NO:1)**, and to RNAi molecules, expression constructs, and vectors thereof, and to a method of use thereof for treating a *c-met* tumor or cancer in a subject, in the reply filed on 11/17/2008 is acknowledged. Also acknowledged is Applicant's further election of SEQ ID NO:15, "stable" expression vector, and si-hMet-Ad5²²¹. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement as applied to the further elections, the further elections have been treated as an election without traverse (MPEP § 818.03(a)).

Applicant's amendments to the claims, filed 11/17/2008, are acknowledged. With entry of the amendment, Claims 1-20, 38, and 48-50 are pending.

Accordingly, Claim 15 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claims 1-14, 16-20, 38, and 48-50 are under consideration and subject to restriction as explained below.

Notice to Comply/Sequence Rules

The previous Restriction Requirement noted this application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2), but that this application fails to comply with the

requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth below or on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.

In the instant case, it was noted the application does not contain, as a separate part of the disclosure, a paper or compact disc copy, or sequence listing disclosing each nucleotide and/or amino acid sequence, as required by 37 CFR 1.821(c). Each sequence disclosed must appear separately in the "Sequence Listing."

Accordingly, Applicant was asked to furnish a sequence listing in compliance with 37 CFR 1.821-1.825.

In reply, Applicant has filed a CRF sequence listing. See submission of 11/17/2008. However, the sequence listing cannot be accepted by the Office due to certain errors in the listing, which are described on the attached Sequence Listing Report (also available in PAIR). Accordingly, the Applicant remains out of compliance with the Sequence Rules and cannot be properly examined at this time. Applicant is requested to resubmit the CRF in corrected form along with any required statements as may be necessary under the Sequence Rules.

Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g).

Election/Restrictions

Applicant's amendments to the claims, adding new claims 48-50, necessitates the following supplemental Restriction.

Restriction is required under 35 U.S.C. 121 and 372.

New Claims 48 and 50 are drawn to a plurality of different methods which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The different methods are distinguished by type of tumor or cancer treated by the method of claim 38 or 49. The different cancers pertain to widely disparate tissues and therefore likely suggest the treatments would necessarily 1) be directed to different patient populations (i.e. subjects), and/or 2) require different “effective amounts” and/or 3) be administered by different “effective routes,” as required by the instant claims. Therefore, the different methods do not share the same or corresponding special technical feature.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single method thereof---i.e., a single tumor or cancer from claims 48 and 50---to which the claims must be restricted. Note, however, linking claim practice is in effect, preserving Applicant’s right for possible rejoinder of the methods should a linking claim be found allowable, subject to the conditions of Linking Claim practice, outlined below.

Claim 38 link(s) the inventions of claim 48; claim 49, the inventions of claim 50. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s). Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection

are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Conclusion

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis Wollenberger whose telephone number is (571)272-8144. The examiner can normally be reached on M-F, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James (Doug) Schultz can be reached on (571)272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Louis Wollenberger/
Examiner, Art Unit 1635
January 10, 2009